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America's Achilles' Heel in Central America:  
Legal Issues in Deterring Terrorism in the Panama Canal<sup>1</sup>

*I. Introduction*

Secretary of Defense Donald Rumsfeld recently challenged the U.S. defense and intelligence communities to effectively combat international terrorism by reassessing their operating procedures and tailoring them toward defeating this new enemy.<sup>2</sup> Rumsfeld directed these leaders to "get in the heads" of terrorist organizations, predict their moves, and effectively counter their offensives.<sup>3</sup> Part of this challenge includes an assessment of the conventional defenses of national and international landmarks on which the United States places great sentimental and financial value.<sup>4</sup> Although these assessments are starting to take place within American borders, the challenge has not been heeded in Central America, where the Panama Canal (the Canal), a crucial element in U.S. foreign investment, stands undefended against acts of terrorist aggression.

American leaders are making a mistake by ignoring this "Achilles' heel" in Central America, and should take positive steps<sup>5</sup> to prevent such a disaster. The importance of the Canal to the United States, coupled with the unique nature of terrorism, calls for immediate action to protect this vital asset. In addition, the United States must empower Panama to unilaterally ensure the lasting safety of the Canal. These measures will require both the mobilization of many parts of the U.S. government and adherence to international treaty obligations. The U.S. Department of Defense (Defense Department) has established a highly effective antiterrorism program, and it is the best program to adopt in Panama. To fail in this mission could cost innumerable lives, billions of dollars, and result in the worst attack on American interests since those of September 11, 2001.

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This comment addresses the legal issues of American involvement in potential antiterrorism operations in and around the Canal. Part II addresses the Canal's historical, economic, and martial significance. Part III details the Canal's history, including an explanation of contemporary American involvement and Panamanian security measures. Part IV illustrates possible methods of attack that terrorist organizations might employ against the Canal. Finally, parts V and VI offer short- and long-term solutions the United States should implement to prevent a terror attack directed at the Canal.

## *II. Historical, Economic, and Martial Significance of the Panama Canal*

The Panama Canal has long stood as an example of American ingenuity. Its completion nearly one hundred years ago<sup>6</sup> sent a message that the United States was a growing power whose entrance onto the world stage would not be delayed. Today the Canal is one of the most traveled sea-to-sea canals in the world, as millions of pounds of cargo pass through it annually.<sup>7</sup> In the 1960s, vocal opposition to the American presence in the region was on the rise, and the Carter Administration questioned the Canal's martial importance.<sup>8</sup> In response, the United States signed the Canal Treaty<sup>9</sup> in conjunction with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal,<sup>10</sup> and relinquishing control of the Canal to Panama at noon on December 31, 1999. Nevertheless, the Canal remains an international symbol of American power and serves as an essential component of American economic and defense capabilities.

The Canal's monumental status, its importance to U. S. interests, and its lack of sufficient antiterrorism measures provide an irresistible target for terrorists seeking to scare the public to further their social, political, and religious goals.<sup>11</sup> Terrorists inspire fear by attacking poorly-defended targets that carry a certain significance with the target

public.<sup>12</sup> An example of this stratagem is the attack of September 11, 2001, which involved nineteen highjackers seizing four commercial aircraft and focusing on poorly-defended targets, including the World Trade Center in New York City, New York, and the Pentagon in Washington, D.C. Intelligence suggests that one of the aircraft, which crashed in rural Pennsylvania, was destined for either the White House or the U.S. Capitol.<sup>13</sup> These buildings serve as symbols of American strength, and as such, the mere knowledge that such monuments are open to attack strikes fear in the hearts of many Americans.

Similarly, the Canal is a symbol of American fortitude. The Canal, however, differs from previous terror targets in ways that invite attack. First, the Canal lies outside of the continental United States, where acts of terrorism are easier to conduct.<sup>14</sup> Second, there is currently no U.S. non-diplomatic presence in Panama.<sup>15</sup> Third, several legal obstacles stand in the way of effective American involvement in protecting the Canal from terrorism.

If the Canal is attacked, American economic and military interests would be devastated. Indeed, four percent of international imports,<sup>16</sup> including fifteen percent of American imports and exports, flow through the Canal annually.<sup>17</sup> Latin America and the Caribbean supply the United States with thirty-one percent of its imported oil – more than all Middle Eastern countries combined.<sup>18</sup> This oil is critical to the U.S. economy because of the volatility of the Middle East,<sup>19</sup> and much of this oil passes through the Canal in tanker ships making their way to U.S. port-cities.<sup>20</sup> In addition, the Canal shortens the sailing time from New York to San Francisco by two weeks, allowing ships to forgo traveling through the Magellan Strait.<sup>21</sup> Increased sailing times could cripple the U.S.

shipping industry, which depends on the Canal to maintain precise shipping schedules between U.S. coasts and the rest of the world. If the Canal is attacked, the economic costs of this added travel time, in addition to repairing the Canal itself, would be incalculable. In addition, the daily operations of the U.S. Navy and allied forces would be severely hampered, as naval vessels routinely traverse the Canal during exercises, mobilizations, and standard calls to port. Interference with these schedules could hamper naval training and the movement of forces.

An attack on the Canal would be devastating to U.S. economic and martial interests. Not surprisingly, the Canal was constructed to further these same interests. Since American shovels first broke ground in attempt to dig a canal across the Isthmus of Panama, there has existed an animosity toward U.S involvement in the region.

### *III. Legal History of the Panama Canal and Current American Involvement*

#### *A. Panamanian Legal History – A Panoply of Foreign Intervention*

*On 24 January [1902], [Theodore] Roosevelt attended his first Gridiron Club dinner as President of the United States. [Senator] Mark Hanna was another guest of honor. Both men laughed heartily as an actor impersonating an obsequious Frenchman bowed, scraped, and presented the Senator with a gold brick labeled PANAMA.<sup>22</sup>*

American roots in the Panama Canal began to take hold in the early years of the Twentieth Century.<sup>23</sup> At the time, Central America was a foreboding place for a major construction project. American politicians such as President Theodore Roosevelt and the influential Senator Mark Hanna, however, believed its construction was not only possible but necessary for furthering American economic growth, international military presence, and increased status in an imperialist age.<sup>24</sup>

Panama gained its independence from Columbia in 1903, and one year later signed the Hay/Bunau-Varilla Treaty, brokered by U.S. Secretary of State John Hay and Panamanian Official Phillippe Bunau-Varilla.<sup>25</sup> The Treaty granted the United States a sovereign ten-mile strip of land, “in perpetuity,” for the construction of a canal,<sup>26</sup> later dubbed the Panama Canal Zone (PCZ).<sup>27</sup> After extensive Congressional haggling over whether the Canal should be constructed on a proposed Nicaraguan site or the location of an earlier French canal-building failure in Panama, the latter was chosen.<sup>28</sup>

Upon its completion, it became apparent that the Canal drastically reduced commercial shipping time.<sup>29</sup> In addition, the Canal proved important to national defense during World Wars I and II.<sup>30</sup> The Canal proved essential for transferring American Naval assets quickly from the U.S. East Coast to the Pacific Theater following the bombing of Pearl Harbor.<sup>31</sup> Consequently, the Canal was a vital part of allied victories in both conflicts.<sup>32</sup> By the time of the Korean War,<sup>33</sup> the largest war ships were too big to pass through the Canal,<sup>34</sup> although the Canal remains vital for smaller military support vessels. The Canal remains an important component of U.S. defense posturing, via the movement of supplies and troops between the Atlantic and Pacific theaters.<sup>35</sup>

Relations between the United States and Panama began to deteriorate in the 1960s, and Panamanians called for an end to the American presence in the PCZ.<sup>36</sup> As a result of this pressure and after considerable political wrangling in Congress, President Jimmy Carter signed the Panama Canal Treaty of 1977 and its immediate successor, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.<sup>37</sup> Both treaties called for an end to the U.S. occupation of the PCZ before the beginning of the Twenty-first Century.<sup>38</sup> Accordingly, the United States relinquished control to Panama on

December 31, 1999.<sup>39</sup> Since the turnover, relations between the United States and Panama have been cordial.<sup>40</sup> The Republic of Panama has made no notable contribution, however, to the U.S. War on Terror.<sup>41</sup> Although Central and South America have yet to be earnestly tapped for support in the War on Terror, the unique location of Panama, coupled with the enormous strategic value of the Canal, makes Panama the obvious “first choice” for the establishment of cooperative, antiterrorism measures in Latin America.

*B. A Swiss Cheese Defense: A Security System Full of Holes*

The Panama Canal Commission (PCC) Security Division is currently responsible for law enforcement in and around the Canal.<sup>42</sup> When the United States ended its occupation of the PCZ, Panama abandoned American security methods in developing a minimal security force. This devolution of the Canal’s security structure is described must succinctly by U.S. State Department background documents on Panama:

The [Panamanian] Government has converted the former PDF [Panamanian Defense Force] into a “law enforcement focused Panamanian public force” subordinate to civilian authority and composed of four independent services: the National Police (PNP), the National Maritime Service (SMN, like the United States Coast Guard), the National Air Service (SAN), and the Institutional Protection Service (SPI, like the United States Secret Service). A constitutional amendment, passed in 1994, permanently abolished the military.<sup>43</sup>

Despite the PCC security division’s unwillingness to release details of its operations to the public,<sup>44</sup> those knowledgeable about the area’s defenses, such as former leaders of the U.S. Navy, have begun to sound the alarm regarding the Canal.<sup>45</sup> Other experts agree

that the volume of traffic<sup>46</sup> and the Canal's size<sup>47</sup> pose unique problems for its defense.

Indeed, it appears as if Panama's national defense force, as a whole, is incapable of protecting the Canal from terrorist attack. While this defense structure may have been well-suited before the events of September 11, 2001, it has become insufficient considering current threats and the importance of the Canal to U.S. and Panamanian interests.

The failure of the Panamanian government to institute sufficient Canal defense measures was not unforeseeable when the United States and Panama signed the two Canal treaties. However, the military and political perspectives of the time, specifically the Cold War, dominated post-secession<sup>48</sup> defense concerns, as expressed in the two treaties. As illustrated, the treaties, on their face, do not provide the provisions necessary to defend the Canal against terrorist attack.

The Panama Canal Treaty of 1977 abrogated all other treaties and agreements between the United States and Panama and today, along with its subsequent amendments, governs American-Panamanian relations regarding the Canal.<sup>49</sup> American involvement under the Panama Canal Treaty was extensive, as the United States provided management of, and a military presence in, the PCZ.<sup>50</sup> However, the post-secession era has been earmarked by the near-total relinquishment of American interests in the PCZ to Panama.<sup>51</sup> The Panama Canal Treaty of 1977 states that “[u]pon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.”<sup>52</sup> This clause addresses the relinquishment of the Canal's management operations and has

grave implications for American law enforcement actions. The possibility of American military action is thwarted by the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, on the basis that, “[a]fter the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.”<sup>53</sup> In short, the United States has not possessed a military foothold in Panama since 1999.

The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal provides even greater insight into the possibilities of American intervention today as well as the shortsightedness of its drafters regarding evolving security threats. In this treaty, the Canal is declared socio-politically neutral, “so that the Canal, and therefore the Isthmus of Panama, shall not be the target of reprisals in any armed conflict between other nations of the world.”<sup>54</sup> Two parts of this clause make the treaty inapplicable to guard against today’s threats. First, it appears that neutrality does not provide protection against terrorism, as terrorists seek to harm American *interests*, whether they be economic, political, or martial, and not necessarily the United States itself. If anything, America’s heavy reliance on the Canal enhances its appeal as a target, as U.S. international relations, the U.S. economy, and the U.S. military could all be damaged by one act of terrorism. Second, the Treaty is geared toward preventing conflict on the Isthmus between “other nations of the world.” Terrorism is a multinational, or perhaps more accurately, an extra-national threat, as it is not bound by the arbitrary lines States draw amongst themselves.<sup>55</sup>

The concerns of traditional warfare are evident throughout the remainder of the Treaty. For example, military vessels are not subject to search by Panamanian officials,<sup>56</sup>

and American ships, post-secession, are given priority over others in times of U.S. military action.<sup>57</sup> These clauses will be beneficial should the United States ever again be engaged in conventional warfare where the movement of naval forces through the Canal becomes imperative. Because today's terrorist organizations do not have navies, large-scale naval battles requiring the rapid deployment of naval battle groups around the world do not appear to be an important factor in the War on Terror. Of course, one can hardly blame the drafters of these Treaties in 1977 for not considering the international terrorist threat as it exists today. Much of the militant ideologies that lend themselves to terrorism were suppressed by the superpowers during the Cold War, as U.S.- and U.S.S.R.-backed governments ruled with an iron fist.<sup>58</sup> However, it is evident that these treaties do not provide sufficient defense measures to deter would-be terrorists seeking to significantly harm the Canal.

#### *IV. Terror Operations and Target Selection – Getting into the Terrorist Mind*

##### *A. How Terrorists Operate*

*So in war, the way is to avoid what is strong and to strike at what is weak.*  
-Sun Tzu<sup>59</sup>

The methodologies of terrorism are not overly complex. Terrorists seek to minimize the difficulty of attacking a target and maximize the attack's "impact."<sup>60</sup> This impact has both a physical and psychological component. Physical damage is caused by the attack itself, but what terrorists seek to maximize is the psychological and emotional impact of their actions.<sup>61</sup> The Defense Department lists six major objectives of terror organizations, including: "[a]ttract[ing] publicity for the group's cause, [d]emonstrate[ing] the group's power, [s]how[ing] the existing government's lack of power, [e]xtract[ing] revenge, [o]btain[ing] logistic support, [and] "[c]aus[ing] a

government to overreact.”<sup>62</sup> With the recent development of world-wide media coverage, “[t]errorism has become a media event and, as such, a phenomenon of our time.”<sup>63</sup>

The Defense Department also lists and describes many “common terrorist tactics” that terrorist organizations employ, three of which are important to this comment.<sup>64</sup> These tactics include bombing, attacks of facilities, and environmental destruction.<sup>65</sup> A terrorist attack focused on the Panama Canal could incorporate all three of these tactics, resulting in devastating and incalculable physical and psychological damage.

The effects of terrorist bombings are familiar to even the most casual observer of world affairs. Non-suicide bombing is advantageous because of its low risk to the terrorist, low monetary cost, ability to time the detonation, and high level of “attention-getting capacity.”<sup>66</sup> Because of these factors, bombing via an “improvised explosive devise (IED) is the terrorist’s weapon of choice.”<sup>67</sup> Examples of recent terrorist bombings include the attack on Marine barracks in Lebanon in 1983, the bombing of Pan American flight 103 over Lockerbie, Scotland, in 1988, the first bombing of the World Trade Center in 1993,<sup>68</sup> and the attack on the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma in 1995.<sup>69</sup>

Attacks on facilities represent the next group of terrorist tactics that could be used against the Canal. Such attacks can demonstrate a government’s lack of control over its own defense and cripple an economy if timely and well-applied.<sup>70</sup> The term “facility,” as used by Defense Department officials in this context, seems to have a broad context. The main concern with attacks on facilities is that, if investors and business people do not have faith in the security of a market for increased or potential investment, they are much less apt to channel funds there.<sup>71</sup> Two examples of this phenomenon are the bombing of

American embassies in Kenya and Tanzania in 1998<sup>72</sup> and the attacks of September 11, 2001.<sup>73</sup> The bombing of the American embassies led to a subsequent decrease in tourism and foreign investment in Kenya and Tanzania,<sup>74</sup> and U.S. stock markets dropped drastically after the September 11, 2001 attacks.<sup>75</sup>

Finally, environmental terrorism, although a relatively new tactic, is one that is likely to be implemented in the near future.<sup>76</sup> The unique geography of the Canal lends itself not only to a crippling bombing, but also to severe environmental fallout. The Canal consists of two multi-lock systems on either side of Gatun Lake, which sits at twenty-six meters above sea level.<sup>77</sup> The locks lift ships to the Lake and lower them back to sea level on the other side.<sup>78</sup> An attack on one of the upper-most locks, either the Gatun Locks on the east side of the Canal or the Pedro Miguel Locks on the west side, could conceivably flood the locks below, destroying one half of the Canal, but could also partially drain the Gatun Lake, making it unnavigable.

Terrorists are like water in that they seek the path of least resistance. If mechanisms are put in place to guard against known methods and targets of terrorist attack, the terrorists will simply use new methods and seek out new targets. Because the goal of the U.S. government is to prevent acts of terror before they occur, reactionary responses to such acts should not be of primary importance. To be effective, American focus must shift from reactive measures to proactive defense against previously unguarded targets.

#### *B. The Panama Canal Is an Easy Target*

An attack on the Canal would be devastating, and several factors make it an easily accessible target. First, few changes have been made to its operating systems since the

Canal opened in 1914.<sup>79</sup> The aged metals in these archaic systems are more susceptible to bomb damage, and their old parts, many of which were custom made, are difficult to replace. Although the age of the systems alone do not make the Canal more susceptible to attack, their prevalence in the Canal would make repairing the Canal much more difficult should an attack occur. Additionally, the Canal's only physical protection is a fence around the former PCZ.<sup>80</sup> Also, since the Panamanian government took control of the Canal in 1999, the PCC has begun opening its doors to various non-state actors in an effort to privatize "ports and invit[e] foreign investors to build hotels, industrial parks, eco-tourism, ship repair facilities and private housing."<sup>81</sup> Such an influx of outside actors could provide cover for terrorist operations. Finally, it is important to note that a history of corruption and violence exists throughout Central and South America, and Panama is no exception.<sup>82</sup> Such a region, where *coup de tats* and rebel insurgencies are a fact of life, seems to provide fertile soil for terrorist organizations to grow and prosper.

The Canal's security problems are exacerbated by the fact that Panama does not have a standing military.<sup>83</sup> Terrorist organizations based in the Middle East, including Hamas and Hezbollah, are currently active in Central and South America,<sup>84</sup> and Panama has no answer for their illicit activities. Lack of a standing military makes Panama exceptional for recruiting, hiding terrorists who have participated in past acts of violence, and raising funds via the drug trade.<sup>85</sup> Although the nature of the drug trade makes difficult the task of quantifying profits, estimated gains from these activities exceed one hundred million dollars annually.<sup>86</sup>

Without a Panamanian military, Columbian rebels could also launch an attack on the Canal.<sup>87</sup> Because of cooperative drug-interdiction efforts between the United States

and Columbia, members of the Revolutionary Armed Forces of Colombia (FARC) are openly hostile to the United States.<sup>88</sup> These armed extremists often hide and operate inside Panamanian borders because of a lack of criminal enforcement in the dense jungles of southern Panama.<sup>89</sup> As of mid-1999, some 7000 anti-American, Colombian rebels were operating inside of Panama,<sup>90</sup> smuggling drugs and arms across the 165-mile Panamanian border.<sup>91</sup> As one expert opined, “[i]t is evident . . . the Panamanians have neither the training nor the equipment to effectively meet the Colombian guerrilla and paramilitary offensives taking place on Panamanian soil or to curb the flow of drugs and arms transiting the region.”<sup>92</sup> These insurgencies should sound an alarm for both American and Panamanian officials. Today’s known terrorist organizations are seeking to recruit American dissident groups to their cause.<sup>93</sup> The cultivation of this hatred could wreak deadly havoc for American interest and South America, especially those areas in and around the Canal.

### *C. Probable Methods of Attack*

It would not be difficult for terrorists to place a bomb at a strategic point in the Canal, and two methods of doing so require attention. However, this should not be viewed as an exclusive list, as terrorists seek to surprise their victims as much as to shock them. Therefore, unusual, but potentially viable tactics should never be ignored. With this in mind, terrorists would most likely seek to bomb one of the upper two locks of the Canal by placing an explosive device on a ship, or by smuggling explosives into the Canal across land.

First, an explosive device could be placed on a container ship and detonated as it passes through either the Gatun or Pedro Miguel Locks. Around 13,000 ships annually

pass through the Canal,<sup>94</sup> many of them container ships. Even in U.S. ports, the Coast Guard has only the capability to inspect less than one percent of entering containers.<sup>95</sup> Thus, it would be impossible to inspect each ship, including all containers, that passes through any major port or sea-lane in operation today.<sup>96</sup>

The second method by which terrorists may try to smuggle explosives into the Canal is by transporting them across land. This may be more effective, as an explosive device could then be secured underwater to the bottom of a lock, making it even harder to detect and increasing its damage potential. Many tributaries, surrounded by dense jungle, feed into Gatun Lake at the center of the Canal,<sup>97</sup> providing many routes to introduce explosive materials into the Canal's waterway. Also, if a ship were in the lock at the time of detonation, the ship itself would immediately serve as an additional obstacle to repair. If this ship were an oil tanker, the magnitude of the explosion and the environmental impact would dramatically increase.

The timing of such an explosion would also be easy to coordinate. The Canal's official Internet website provides a live web-camera of the Gatun and Miraflores Locks that is updated every ten seconds.<sup>98</sup> A terrorist need only sit at home and watch the web-camera, waiting for his explosive-laden ship to enter the locks. This process is further simplified if explosives are planted underwater on the locks themselves, as the terrorist can choose from any ship entering the locks. Using modern satellite communications equipment readily available in a cellular telephone, the explosives could be detonated remotely from anywhere in the world at the moment a ship enters the lock.<sup>99</sup> With such useful information readily available, one must wonder why terrorists have yet to realize the magnitude of the Canal's vulnerability.

*V. Short-term Solutions: Protecting the Canal without Invading the Scope of Panamanian Autonomy or the Laws of the High Seas*

*We must take the battle to the enemy, disrupt his plans and confront the worst threats before they emerge. In the world we have entered, the only path to safety is the path of action. And this nation will act. – President George W. Bush<sup>100</sup>*

In proposing defense measures for the protection of the Panama Canal, it is beneficial to differentiate between short-term solutions and long-term solutions. Over a span of years, an operational framework can be established that will allow Panama to better protect the Canal with minimal U.S. involvement. However, this does not solve the Canal's security problem as it exists today. A non-exhaustive list of concerns surrounding renewed American involvement in the Canal and possible, short-term solutions follow.

*A. The Foundation: Key Concerns for the Protection of the Panama Canal*

From the onset, it is important to differentiate between counterterrorism and antiterrorism. U.S. Defense Department *Joint Publications* are legally binding documents,<sup>101</sup> and *Joint Publication 3-07.2, Joint Tactics, Techniques, and Procedures for Antiterrorism* gives definitions of both types of operations. Antiterrorism is defined as “defensive measures used to reduce the vulnerability of individuals and property to terrorist acts, to include limited response and containment by local military forces.”<sup>102</sup> Hence, antiterrorism is primarily defensive in nature.<sup>103</sup> On the other hand, counterterrorism is defined as “offensive measures taken to prevent, deter, and respond to terrorism.”<sup>104</sup> Counterterrorism operations are directed at the highest levels of the U.S. government and are described “in relevant National Security Decision Directives, National Security Directives, contingency plans, and other relevant classified

documents."<sup>105</sup> Because information on counterterrorism is not readily obtainable by the public, the scope of this comment is limited strictly to antiterrorism operations.

Next, it is essential to identify a few overarching policy concerns to which the United States must be sensitive to adequately confront the threat of terrorism to the Canal. First, it is the goal of any antiterrorism action to identify and protect a potential target of terrorism.<sup>106</sup> In this case, protection of the Canal must be the highest priority. It is easy for government leaders to take the path of least resistance in the international arena, choosing a hollow compromise instead of a hard-fought resolution to a difficult problem. Although political wrangling with Panama over the protection of the Canal may never materialize, the United States should be prepared for such difficulties. Of course it would not benefit the security process to run roughshod over smaller nations, but U.S. authorities must keep in mind that their ultimate mission is to protect the Canal now and in the future. An ineffective solution to this problem will provide a false sense of security, while leaving the door open for terrorist attack. Hollow agreements must be avoided, and the protection of the Canal must remain the focus of any such international political exchange.

Second, it is important to include Panamanian authorities to the greatest extent possible and limit impediments on Panamanian autonomy. Initially, the level of American involvement could range from consultation with Panamanian officials to full-scale interdiction. However, the United States should tread lightly and diplomatically, while bearing in mind the ultimate goal of preventing a terror attack. Doing so will instill legitimacy in any such operation and help quell the possible displeasure of Panamanian

citizens, who may see renewed American involvement in their country as an infringement on their sovereignty.

Third, the United States should make efforts to minimize the logistic “footprint” of any operation that takes place within the borders of Panama. Simply put, minimizing a logistic footprint means using the smallest amount of equipment and force necessary to complete a task. If the U.S. government is invited inside Panamanian borders, it should do its best to minimize the size of the operation. Doing so will decrease the cost of the operation, limit exposure to terrorism of American facilities and equipment, and contribute to the operation’s legitimacy as viewed by the Panamanian people. In addition, a host of legal concerns lend themselves to these proposals, to which the remainder of this comment is dedicated.

Finally, it is important to determine the duration of short-term operations as discussed in this section. Short-term in this setting refers to the time period from now until diplomatic relations allow antiterrorism operations within Panama to officially begin. Although some of these methods may continue past this point, their implementation should be immediate.

#### *B. U.S. Governmental Actors – Integration, Roles and Scope of Action*

The initial response to the terror threat in the Canal will require the highly-integrated efforts of various U.S. agencies. Coordination amongst various state actors is essential to prevent duplication of effort and to decrease mission costs. With this in mind, an assessment of the short-term roles of the U.S. President, Department of State (State Department), Defense Department and Coast Guard is in order.

### *1. The President – Leader and Integrator*

U.S. Presidents have the duty to react to national crises because of their “inherent authority as the Executive.”<sup>107</sup> To deter terrorism in the Canal, they must effectively integrate the activities of several agencies and departments. In addition, they must adhere to the constraints placed on them by Congress and work within the confines of the U.S. international treaty obligations.<sup>108</sup> Effective leadership by the President is essential to a successful antiterrorism operation in support of the Canal.

First, it is important to note that the 1977 Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal allows for new arrangements to be made between Panama and the United States following the 1999 accession of the Canal, as long as these new arrangements are established by both countries’ constitutional processes.<sup>109</sup> Such measures can include the stationing of U.S. military forces within Panama,<sup>110</sup> as well as the use of a host of less-intrusive defense mechanisms. With this aspect of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal in mind, presidential action is restrained primarily<sup>111</sup> by the Foreign Assistance Act of 1961 (FAA).<sup>112</sup>

The FAA is an omnibus piece of legislation governing all aspects of American activities in the international arena, and compliance with the FAA will be necessary when dealing with the Panamanian government in hopes of securing the Canal. Of specific importance to this comment, the FAA establishes the “Enterprise for the Americas Initiative,” which grants the Executive certain powers when dealing with the countries of Central and Latin America.<sup>113</sup> In this initiative, the FAA expressly allows for funding of projects that enhance economic growth.<sup>114</sup> If the Canal is made more secure, it can easily

be reasoned that more ships will be willing to pass through it. Increased traffic will result in increased tolls for passage as well as a greater number of people using the Canal's port facilities. As a result, increased Canal security can easily be justified as an opportunity for economic growth. As such, the President can draw on this clause of the FAA to fund most antiterrorism actions.

A presidentially directed action taken to protect U.S. interests in the Canal must also adhere to U.S. international treaty obligations. The Law of the Sea Convention<sup>115</sup> is instructive as to what law enforcement actions can be conducted on the oceans' waters. The Convention covers a broad range of issues, including the establishment of marine territory, international navigation, economic zones, marine wildlife, and settlement of disputes that arise from incidents in international waters.<sup>116</sup> The Convention was adopted on December 10, 1982, and commenced on November 16, 1994.<sup>117</sup> Since then, over 140 states have signed the Convention.<sup>118</sup> Although the United States played a significant role in drafting the Law of the Sea Convention, it is the only permanent member of the United Nations Security Council who has yet to sign on<sup>119</sup> because of concerns over the Convention's ban on deep-sea bed mining.<sup>120</sup> Although not a signatory, the United States acts within the confines of the Convention's codification of customary international law.<sup>121</sup>

President George W. Bush, as well as past U.S. presidents, supports accession of the United States to the Law of the Sea Convention as a coalition building measure,<sup>122</sup> but a closer look at the Convention reveals that accession without reservation could cause more harm than good in waging an international war on terrorism. The reasons cited by the Bush Administration for signing the Convention are many. First, according to

testimony of top U.S. Naval officials<sup>123</sup> and former U.S. Secretary of Defense William S. Cohen, signing the convention will allow rapid transit of naval assets between military theaters.<sup>124</sup> This is because of the “military activities” exemption under the Convention,<sup>125</sup> which makes military activities exempt from international dispute resolution procedures.<sup>126</sup> The phrase “military activities” is to be defined by the individual state,<sup>127</sup> but the United States has avoided defining this term by simply not signing the Convention.<sup>128</sup>

Former Secretary Cohen also points out that the failure to accede to the Convention “continues to be detrimental to U.S. international reputation and adversely affects U.S. credibility in international fora.”<sup>129</sup> In addition, the U.S. military depends on customary international law for contingency planning and routing assets for daily operations.<sup>130</sup> Codification of customary international law is beneficial to the Defense Department in the event customs on which these assumptions are based change.<sup>131</sup> Others say that joining the Convention would allow the United States to greater influence maritime law through involvement in Convention activities,<sup>132</sup> including international cooperation to fight piracy, other-crimes deterrence,<sup>133</sup> providing additional training to port and law enforcement officials,<sup>134</sup> and the use of a proposed international ship registry.<sup>135</sup>

If it is signed, the Bush Administration has called for continued review of American involvement under the Convention to ensure U.S. interests are not being harmed.<sup>136</sup> However, the United States will face immediate, potential problems should it become a signatory to the Law of the Sea Convention. First, it seems that protection of military vessels could allow for the rapid transit of terrorists sailing under the guise of an

official military operation. In addition, state-sponsored terrorism conducted from ships suspected only of legitimate, military operations would be difficult to interdict. Furthermore, the Convention as a whole seems slanted toward the consideration of Cold War-style state-to-state warfare, as seen in its provision for the rapid movement of official naval vessels. The benefits gained by the rapid deployment of the U.S. Navy could be offset by the potential strategic edge given to terrorists under this same clause of the Convention. Although this aspect of the Convention will aid traditional U.S. security measures, a more non-conventional approach is needed to stop terrorists from navigating an explosive-laden vessel into the Canal. With this in mind, the Bush Administration has recently taken bold steps, beyond the Law of the Sea Convention, which have elicited concern from a broad range of the international community.

President Bush announced in June 2003 his Proliferation Security Initiative (PSI), aimed at interdicting cargo ships and aircraft suspected of carrying "illegal weapons or missile technologies."<sup>137</sup> Thus far, eleven countries have signed the initiative,<sup>138</sup> although it has yet to be used as a law enforcement mechanism.<sup>139</sup> Bush Administration spokespeople have stated that they believe the United States has authority to conduct such interdictions and would conduct such action now if intelligence suggested doing so would be fruitful.<sup>140</sup> Also, the Administration will seek to "expand" the law where it does not fit PSI requirements.<sup>141</sup>

The Bush Administration is also seeking to further maritime inspection powers now limited by Congress.<sup>142</sup> Currently, such inspections are limited to within three miles of the U.S. coastline, although American waters extend for twelve miles.<sup>143</sup> President Bush is seeking congressional support to expand this power to encompass a nine-mile

span,<sup>144</sup> creating an area far greater for the U.S. Coast Guard to monitor. The administration is also seeking support for other maritime security initiatives, including authority to regulate deep-sea petroleum facilities, conducting security assessments of foreign ports, and the establishment of domestic criminal penalties for acts of terrorism that occur on the high seas.<sup>145</sup>

Although these security measures have yet to be implemented, their procedure may eventually undermine their purpose. If intelligence suggests a ship is carrying illegal materials into a state's national waters, the ship can currently be seized and searched by local authorities. Such action would be in congruence with the Law of the Sea Convention, which provides that ships are to be regarded as autonomous parts of the state under whose flag it sails.<sup>146</sup> However, at this point an explosive-laden vessel could already be in port, and a terrorist need only detonate the explosives to meet his goal. PSI can be called into use on the high seas when threatening vessels are not destined for an allied port. However, PSI is the type of subversion of autonomy that fuels terrorism. Subversion of international shipping rights and customary law may backfire, and the United States could ultimately lose credence in the international arena. The further development of PSI, as well as its possible use, may protect the Canal in the short-term. However, such invasive practices on the high seas may eventually lead to a more determined terrorist effort or a greater number of attempted attacks on the Canal. In short, the United States must balance its reputation in the international community with its need to immediately interdict threatening vessels.

## *2. State Department – The Lead Agency in the International War on Terrorism*

The U.S. State Department is the lead agency for terrorism prevention outside of the United States.<sup>147</sup> The mission of the State Department is to “create a more secure, democratic, and prosperous world for the benefit of the American people and the international community.”<sup>148</sup> The State Department’s role is important to this comment because of its function as the lead agency for U.S. foreign affairs, specifically for its ability to work diplomatically with the Panamanian government.

The State Department has established an Anti-Terrorism Assistance<sup>149</sup> program (ATA) to handle such issues in the international arena, which is governed by the FAA.<sup>150</sup> The primary purpose of ATA is to prevent terrorists “from undermining the stability of, or otherwise adversely affecting, other nations where the U.S. has foreign policy, economic, or security interests at stake.”<sup>151</sup> To accomplish these goals, ATA draws expressly from the FAA for several purposes. These goals include training, explosive detection and disposal, aiding in hostage crises, physical deterrence, apprehension of terrorist suspects, and “the detection, deterrence, and prevention of acts of terrorism.”<sup>152</sup> All of these activities are relevant to the Canal and, as a result, the ATA grants the State Department a great deal of latitude to confront terrorist threats against the Canal.

The primary consideration of the State Department must be to build stronger diplomatic ties with Panama. This can be accomplished through several mechanisms, including increased aid, stronger diplomatic presence, and official visits by the Secretary of State, his assistants, and other State Department officials. The Panamanian government and citizens must know that they are not being forced by the United States to increase their defenses solely to protect American interests. If the United States helps to

implement security measures and does nothing else to strengthen its bond with Panama through increased funding or diplomacy, one can expect a cynical response from the Panamanian people.<sup>153</sup> Such cynicism could undermine American efforts to protect the Canal, and possibly even have a detrimental effect on the Canal's overall security. Strong diplomatic ties are essential to empowering Panama to adequately protect this major asset.

Next, the State Department must collect applicable intelligence from the Central Intelligence Agency, Federal Bureau of Investigation, and Defense Department, and serve as a conduit for intelligence sharing with Panama. This will allow the collecting agency and the State Department to act~~s~~ as dual filters – avoiding duplication of effort, preventing the release of intelligence irrelevant to the protection of the Canal, and minimizing unnecessary “finger pointing,” should sensitive material be wrongfully released. Eventually, the State Department and Panamanian authorities should strive for increased Panamanian intelligence collection and, to the greatest extent possible, integration of both nations’ intelligence analysis processes. This will result in broader coverage of the intelligence spectrum and, hence, more effective intelligence operations.

Finally, the State Department should continue to work through the Organization of American States’ Inter-American Committee Against Terrorism (CICTE)<sup>154</sup> and should add the Canal to the Committee’s focus. The State Department’s current Deputy Coordinator for Counterterrorism is the Chairman of the CICTE,<sup>155</sup> and thus far has been primarily focused on immigration and financial controls.<sup>156</sup> The scope of CICTE should be broadened to include a more active role in the defense of important landmarks and

facilities in the region. With a State Department official as Chairman, this focus shift should not be difficult to realize.

The State Department is a vital factor in U.S. efforts to help secure the Canal. As the head of this lead agency, the Secretary of State will play a significant role in guiding the policy of U.S. force America.

### *3. Department of Defense – A Necessary Ingredient*

As described above, the potential scope of military action in this case is controlled by the President. Current military doctrine, which is described in Defense Department *Joint Publications*,<sup>157</sup> suggests two possible avenues for the use of military action. The first is broadly classified as Military Operations Other Than War (MOOTW).<sup>158</sup> The second is the utilization of U.S. Special Forces.<sup>159</sup>

#### *a. MOOTW – Uses of the Military Other than War*

MOOTW encompasses the uses of military forces that fall short of war and focuses on deterring and resolving violence, peace building, and supporting local authorities.<sup>160</sup> The primary consideration of a MOOTW operation is U.S. political objectives.<sup>161</sup> As such, commanders at every level must ensure their forces “understand the political objectives and the potential impact of inappropriate actions,”<sup>162</sup> and remain flexible regarding the security or political climate.<sup>163</sup> Strategically, the deterrence and forward presence components of MOOTW are essential in securing the Canal.

The term “deterrence” encompasses a wide range of actions used by U.S. Armed Forces to prevent potential aggressors from acting on their violent intent.<sup>164</sup> Deterrence seeks to make enemies weigh the costs and benefits of a violent act and determine that the former outweighs the latter.<sup>165</sup> Deterrence as an aspect of MOOTW can range from

the use of force in raids or strikes, which demonstrate “national resolve to use force,” to humanitarian assistance and peacekeeping, the goal of which is to foster a climate of cooperation.<sup>166</sup> Within the definition of deterrence also lies a distinction between physical and psychological deterrence. Physical deterrence simply involves preventing enemy activity via the means of a physical device.<sup>167</sup> The most obvious example is a fence. Psychological deterrence is somewhat more obtuse, as it involves an enemy weighing the costs of performing a violent act.<sup>168</sup> Psychological deterrents can include lights and sirens. A fence can also serve as a psychological deterrent as a terrorist will be forced to think about getting around or over the fence. Thus, a fence can serve as both a physical and psychological deterrent. Although these are simplified definitions, it is important to understand the mission of deterrence as potentially applied to the Canal. The most obvious way this can be done is through a “show of force” brought about by the location of American troops near and around the Canal’s vital areas, i.e. the locks and points of entry. This is more commonly referred to as “forward presence.”<sup>169</sup>

U.S. forward presence is essential to preventing an act of terrorism in the Canal. As described above, if terrorists know the American military is active in an area, they will be less willing to conduct activities there.<sup>170</sup> Forward presence in the area of the Canal can be carried out with minimal interference with Panamanian autonomy and can be conducted as a combined show of force with Panamanian authorities through the use of naval vessels stationed in international waters or over-flights by military aircraft.

In the short-term, MOOTW can also be applied to the protection of shipping. Without Panamanian consent, the U.S. Navy and Coast Guard must remain in international waters.<sup>171</sup> However, through the implementation of MOOTW, the U.S.

Navy and Coast Guard could still protect U.S. vessels from an explosive attack such as the one that damaged the U.S.S. Cole in October of 2000.<sup>172</sup> This could be accomplished by a show of force or by eliminating such threats before they reach their target. Operations inside of Panamanian waters and the Canal will require diplomacy between the United States and Panama and will be discussed as a long-term solution.

*b. Special Forces Operations – The Inherent Risk of Covert Activity*

Military operations conducted by Special Forces, or simply “special operations,” are “operations conducted by specially organized, trained, and equipped military and paramilitary forces to achieve military, political, economic, or informational objectives by unconventional military means in hostile, denied, or politically sensitive areas.”<sup>173</sup> As such, special operations are covert military measures that take place behind enemy lines or in areas where American forces are not welcome.<sup>174</sup> If the United States gathers intelligence that a terrorist organization is operating within Panamanian borders, and Panama is unwilling to counter this threat, U.S. Special Forces could be called into action without Panama’s approval.

Although covert special operations use “discriminate and precise use of force,”<sup>175</sup> there are significant risks inherent in their use. First, although widely considered the best in the world at what they do, Special Forces troops are in great danger on any given mission. Such soldiers enter into extremely hostile environments with little but their weapons and wit to help them survive and complete their mission. In Panama, Special Forces could be most effectively employed for two distinct missions: reconnaissance and direct action.<sup>176</sup> Reconnaissance entails intelligence gathering and monitoring of friendly or enemy activities<sup>177</sup> and can be used in Panama for a broad range of purposes.

Examples of potential reconnaissance missions include tracking FARC cells, learning more about terrorist organizations' utilization of the drug trade, or watching for weaknesses in the Canal's defense system. On the other hand, direct action is just that – countering a threat or perceived threat through the use of force.<sup>178</sup> Public exposure to the misuse of direct action by U.S. Special Forces working inside Panama would undoubtedly cause a windfall of bad publicity for the U.S. government – not only at home, but in the international community. As a result, such force should be used sparingly, if at all.

#### *4. The Coast Guard – Integration and Legitimacy*

Finally, the U.S. Coast Guard must play an important role in ensuring the short-term security of the Canal. The Coast Guard routinely provides its ships, aircraft, boarding crews, and other personnel to actions headed by the State and Defense Departments to secure international ports and waterways.<sup>179</sup> During times of conflict, the dual role of international port operations and security are delegated to the Coast Guard, as outlined in a 1995 memorandum of agreement between the Secretary of Defense and the Secretary of Transportation.<sup>180</sup> These tasks would become essential should Panama decide to relegate them to the United States for a finite period of time, as the United States would then be responsible for the Canal's port operations and security. In addition, the Coast Guard possesses law-enforcement capability<sup>181</sup> that could legitimize police actions in international waters. A potential drawback to the use of Coast Guard personnel and assets in a foreign theater is that these assets will have to be diverted from domestic port- and waterway-security operations. This will reduce domestic defense capabilities.<sup>182</sup>

The utilization of these short-term solutions without the approval of the Panamanian government should be just that – short-term. A lengthy policing operation using military assets off the Panamanian coast might be interpreted as an act of aggression if it were allowed to continue for a significant amount of time. The goal of the U.S. government should be to conduct these types of policing operations, using force as discriminately as possible, only until diplomatic measures can be put in place to allow for the following, long-term solutions to be implemented.

*VI. Long-term Solutions: Empowering Panama to Ensure Adequate, Lasting Security of the Canal*

For the continued protection of the Panama Canal, the United States must reestablish diplomatic ties with Panama so as to allow for continuous American support of the Canal's defense measures. These defense mechanisms must remain under Panamanian control but need to be augmented by the capabilities of the U.S. military, law enforcement, and intelligence communities. In addition, a facility defense system, modeled after those used by the U.S. military, can best assure the safety of the Canal for years to come.

*A. Walking on Egg Shells: Panamanian Reluctance and the Importance of Delicacy*

In this relatively new War on Terrorism, it is understandable that some nations may be reluctant to aid American efforts. As the War on Terrorism has yet to deeply impact Central America, this reluctance is a possible hurdle in dealing with Panama. Although there is no official U.S. policy for dealing with such states, the Bush Administration has noted that “[t]hese cases will be the most delicate,” and has called for “constructive engagement, with sustained diplomacy and targeted assistance.”<sup>183</sup> The following propositions keep these factors in mind, while developing an operational

framework suitable to the unique challenges presented by the Canal. The continued success of a Canal defense system requires the United States to help Panama reach a sufficient level of Canal defense, not for the United States to force a foreign system down Panamanian throats.

*B. Support for a Proposed Operational Framework – Fundamental Uses of U.S. National Power*

The proposed, hierarchical system laid out for the defense of the Canal, infra, stems from U.S. military law.<sup>184</sup> Because such measures have yet to be discussed with Panamanian authorities, a detailed proposition would currently be premature. Therefore, these proposals will be limited to broad, conceptual suggestions dealing with the organization, structure, and components required to revamp the Canal defense system.

The proposed Canal security system is based on a Defense Department policy entitled Foreign Internal Defense (FID). FID is based on the tenant that an allied nation may receive help from the United States in securing its borders from insurgents, terrorism, or other threats to its peace.<sup>185</sup> FID is defined as “the participation by the civilian and military agencies of a government in any of the action programs taken by another government to free and protect its society from subversion, lawlessness, and insurgency,”<sup>186</sup> and its purported focus is “to support the host nation’s . . . program of internal defense and development.”<sup>187</sup> FID has been a principal component of U.S. involvement in Central America, and is proving to be an effective strategy in the War on Terrorism.<sup>188</sup>

The success of a FID operation requires the use of all elements of American power, which is especially important in protecting the Canal. Four distinct elements of national power are crucial in ensuring an adequate defense of the Canal. First is the

diplomatic element.<sup>189</sup> Current U.S. diplomatic ties with Panama are cordial, but seem to rise no further than those with other Central American countries.<sup>190</sup> Considering the importance of the Canal to the U.S. economy and military, this should be quick to change. The United States must show Panama that it is serious about aiding in the defense of the Canal, and that it will provide whatever means necessary to ensure its safety. Strong diplomatic ties are an essential foundation to the operational framework.

Second is the economic element.<sup>191</sup> The United States can hardly expect Panama to institute a more robust defense network for the Canal without some form of financial aid. The foremost recipient of such aid should be the Canal's defense; however, supplying additional aid for the Panamanian government and people would strengthen diplomatic ties. The economic element of FID can also encompass training and the supply of defense and law enforcement equipment – both of which will be essential in maintaining safe passage for vessels through the Canal.

Third, the informational element is crucial.<sup>192</sup> The exploitation of information is two-fold to this argument. First, U.S. FID efforts in Panama must be accurately publicized to the rest of the world in as positive a light as possible. Also, the United States must be willing to share with Panama intelligence information concerning threats to the Canal. Securing and exploiting information for the benefit of the United States and Panama is essential in the interests of legitimacy and operational security.

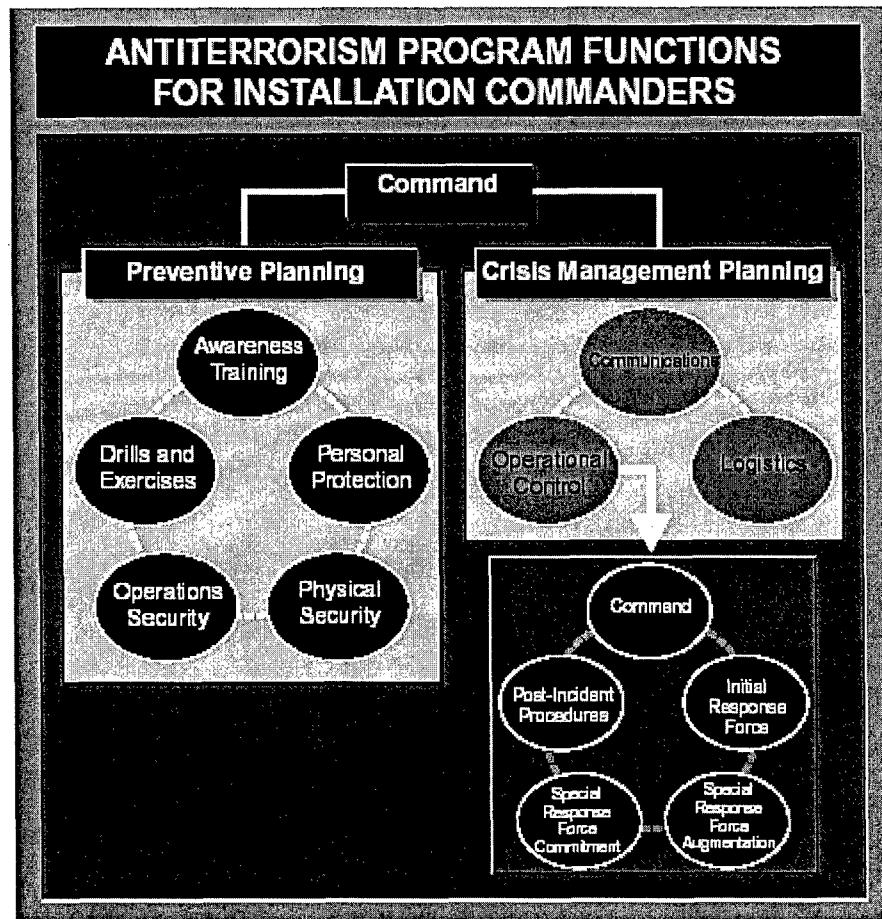
Finally, the defense element is important to a FID program. For purposes of securing Panamanian autonomy, the role of the Defense Department in defending the Canal must be limited to indirect support, such as training and intelligence gathering. Although training of Panamanian authorities does not have to be carried out by military

authorities, the Defense Department seems especially well suited to do so. Special Operations Forces have been training defense and police forces around the world for decades, and can apply a wide range of knowledge to any training regimen. In addition, U.S. law allows for the exchange of personnel between American and foreign military units.<sup>193</sup> This could strengthen the bonds between the military forces of the United States and Panama, and provide invaluable training opportunities for Panamanian authorities. Beyond these types of armed forces activities, further escalation of military involvement would jeopardize the legitimacy of a FID operation in Panama. Although the role of the military will remain important after diplomatic ties have been strengthened and FID implementation has begun, its restraint must always be ensured.

The diplomatic, economic, informational, and defense elements of national power must be integrated into any FID program – especially so in Panama. The unique importance of the Canal to the United States, coupled with the potential hostility of the region to American over-involvement, calls for a highly-integrated, highly-limited operation, carried out in tandem with the Panamanian government.

### *C. A Proposed Operational Framework – Fundamental Uses of Panamanian National Power*

Of the antiterrorism procedures employed throughout the world, perhaps the most thorough is that adopted by the U.S. Defense Department. Because the functional components of the Canal are smaller in scale than most U.S. military establishments, a similar program could be successfully adopted to protect the Canal. Typically initiated by the commander of an American military installation, this antiterrorism program seeks to prevent terrorist attacks as well as successfully respond to an attack should one occur.<sup>194</sup>



The two halves of this antiterrorism program,<sup>195</sup> preventative planning and crisis management planning, necessitate interaction amongst its various programs. A sequential analysis of each of these aspects, as applied to the Canal, is in order.

### *1. Preventative Planning*

First is the notion of preventative planning, dedicated to stopping acts of terrorism before they begin.<sup>196</sup> Preventative planning involves five interrelated concepts, including: awareness training, personal protection, physical security, operations security, and drills and exercise. Preventative planning is the first step in antiterrorism planning, and is necessary in shifting the stance of an antiterrorism operation from reactive to proactive.

Awareness training is essential to an antiterrorism program, and it is of paramount importance in the Canal. Canal employees and travelers must be adept at recognizing developing acts of terrorism and either preventing them, or alerting authorities.<sup>197</sup> This constant vigilance will provide a psychological deterrent to would-be terrorists and decrease reaction time in the event of an attack.

Second, additional methods to protect the Canal's operating staff must be implemented. This is referred to as personal protection.<sup>198</sup> The most important goal of this operational framework is protecting lives, in this case, the lives of those who work on, in, and around the Canal.<sup>199</sup> In addition, if security or operations personnel are forcibly removed from their posts, or killed, parts of the Canal could be held hostage by terrorists, effectively halting Canal operations. Adequate protection of personnel, through effective security and continued vigilance, will enhance the terrorism prevention measures of the Canal as a whole.

Third, physical security of the Canal itself is an issue.<sup>200</sup> Physical security is most important at the Canal's most vulnerable points – the locks. Physical security can be accomplished above the water through increased surveillance, more widespread inspection of cargo ships, and greater illumination of the locks and surrounding areas. In addition, video cameras or motion detectors should be used below water-level to detect the planting of submerged explosives. Although such devices may initially be cost-prohibitive, they are the only adequate protection against an attack under the water's surface, and should eventually be implemented, regardless of cost. Such physical security measures play an important role in preventative planning.

Fourth, the *activities* in and around the Canal must be secured through operations security.<sup>201</sup> Terrorists do not normally attack without conducting intensive, preliminary surveillance of their target. The Canal would be especially prone to such surveillance, because thousands of people traverse the Canal daily. Vigilance regarding suspicious activity can provide some security, but so to can varying the timing and sequence of daily events. For example, the timing of ships entering the Canal's locks could be varied daily. This would prevent a terrorist from determining when to attack based upon easily predictable, daily activities, such as knowing when a ship will be in a lock at any given moment.

Finally, Panamanian officials must conduct extensive drills and exercises to test security and protection measures. Examples of such drills could include leaving an unmanned vehicle near a lock, putting imitation-explosive materials on a ship traversing the Canal, or conducting full-fledged hostage takeover scenarios. Indeed, all these circumstances should be prepared for, as should other scenarios enacting terrorist tactics that could be used against the Canal. Doing so will ultimately strengthen the Canal's defense mechanisms, providing greater deterrence to terrorist organizations and greater reaction capabilities should an attack occur.

## *2. Crisis Management Planning*

In addition to prevention, Canal officials and the Panamanian government must be prepared to act should an attack be carried out. To be effective, a crisis management plan should be established to prepare for such an event. In addition, such a contingency plan must be flexible to effectively counter various types of terror attacks. With this in mind,

there are three crucial aspects of crisis management planning: operational control, communications, and logistics.<sup>202</sup>

First, clear operational control must be established.<sup>203</sup> Without operational control following a terrorist attack, one can expect fear, panic, and terror to rule the day.<sup>204</sup> To minimize such reactions, the command authority must have a predetermined set of post-incident procedures,<sup>205</sup> including a command hierarchy, should an attack occur.<sup>206</sup> In addition, Canal authorities should establish an operations control center, and a backup facility should the primary facility be destroyed in an attack.<sup>207</sup> Various types of response forces should also be established. These forces must include, but are not limited to, an initial response force and special response force augmentation teams that each have designated commitments following an act of terrorism in the Canal.<sup>208</sup>

Second, adequate communication must be established now in anticipation of an attack.<sup>209</sup> Terrorists, to maximize the effects of their deeds, may seek to destroy communication capabilities in and around the Canal. To guard against this tactic, redundancy should be built into Canal communication systems. In addition, adequate, emergency backup modes of communication should also be in place. If terrorists are allowed to disrupt the communications of rescue and repair personnel, the damage they cause may increase exponentially.

Finally, there must be adequate logistics capabilities should an attack occur.<sup>210</sup> An effective logistical response includes providing medical attention to those immediately in need, evacuation capabilities, and providing food and shelter for rescue personnel and victims. Solid logistics capabilities work in unison with operational control and communications to reduce the effectiveness of a terrorist's actions.

This combination of operational control, communications, and logistics can greatly reduce the effects of an act of terrorism, saving many lives in the process. Panama must be empowered to react in such a way to counteract the effects of terrorism, should such an attack ever be carried out against the Canal.

#### *VII. Conclusion*

The War on Terrorism is unlike any war in history, and the end is not in sight. To protect American interests overseas, the United States must make strides in the international community to ensure not only the short-term security of American assets, but also to protect the long-term strength of America's international partnerships. Nowhere is this more evident than in Panama, where the United States must make the protection of the Panama Canal a national priority. The Canal currently stands nearly defenseless against attack, and Panama cannot adequately address its defensive shortcomings unilaterally. Therefore, the United States must take appropriate, calculated steps to aid Panama and correct this situation. The potential for a phenomenal act of terrorism, whose economic impact could far outweigh that of the attacks of September 11, 2001, currently exists in the Canal, and the U.S. government is not giving this problem the attention it deserves. America's current policy is analogous to an ostrich putting his head in the sand, ignoring threats because he chooses not to see or hear them. Such a policy with regards to the Canal invites terrorist aggression and may someday result in a catastrophic failure of U.S. foreign policy. The threat is real, the time is now, and America must act.

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<sup>1</sup> The views expressed in this article are those of the author and do not reflect the official policy or position of the U.S. Air Force, Defense Department, or the U.S. Government.

<sup>2</sup> U.S. Department of Defense, *Transforming the United States Military*, at <http://www.defenselink.mil/specials/transform> (last visited Sept. 21, 2003).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> New York Civil Liberties Union, *Rights Advocates Raise Strong Objections to New Antiterrorism Legislation: Charge the Proposed Laws Would Undermine Fundamental Civil Rights and Civil Liberties*, available at [http://www.nyclu.org/antiterror\\_031203.html](http://www.nyclu.org/antiterror_031203.html) (last visited Dec. 17, 2003) (stating that “These bills are stale, discredited, reactionary ideas that have been legislatively attempted before and failed.”)

<sup>6</sup> CNN.com, *Troubled Passageway: Following Conflict Through the Panama Canal*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/history> (last visited Sept. 21, 2003).

<sup>7</sup> See Panama Canal Traffic—Fiscal Years 2001 through and 2003, at 1, at <http://www.pancanal.com/eng/maritime/reports/table01.pdf> (2003) (giving total of annual long tons of cargo shipped for the past three fiscal years. In 2000, 193,721,862 tons. In 2001, 193,152,940 tons. In 2002, 187,823,728 tons).

<sup>8</sup> CNN.com, *Troubled Passageway: Following Conflict Through the Panama Canal*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/history/> (last visited Sept. 21, 2003).

<sup>9</sup> Panama Canal Treaty of 1977, Sept. 7, 1977, U.S.-Pan., 33 U.S.T. 39 [hereinafter Panama Treaty].

<sup>10</sup> Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, Sept. 7, 1977, U.S.-Pan., 33 U.S.T. 1 [hereinafter Permanent Neutrality Treaty].

<sup>11</sup> **Dep’t of Def. Joint Pub. 3-07.2, Joint Tactics, Techniques, and Procedures for Antiterrorism**, I-1 (Mar. 17, 1998) [hereinafter **Joint Tactics**] (defining “terrorism” as “[t]he calculated use of violence or threat of violence to inculcate fear intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.”); **Nat’l Sec. Council, National Strategy for Combating Terrorism** 1 (2003) [hereinafter **NSCT**], available at [http://www.whitehouse.gov/news/releases/2003/02/counter\\_terrorism/counter\\_terrorism\\_strategy.pdf](http://www.whitehouse.gov/news/releases/2003/02/counter_terrorism/counter_terrorism_strategy.pdf) (defining terrorism as “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”).

<sup>12</sup> **Joint Tactics**, *supra* note 11, at I-1.

<sup>13</sup> CNN.com, *‘America is Grateful’ to Flight 93 Heroes: A ‘Wave of Courage’ During Doomed Assault on Hijackers*, at <http://www.cnn.com/2002/US/09/11/ar911.memorial.pennsylvania/index.html> (last visited Dec. 17, 2003).

<sup>14</sup> See Terrorism Incidents and Significant Dates, at <http://www.mipt.org/incidentcalendar.asp> (Recent terrorist attacks outside of the United States include the attack on U.S. Marine barracks in Lebanon in 1983, the bombing of Pan Am flight 103 over Lockerbie, Scotland, in 1988, the dual attack on U.S. Embassies in Kenya and Tanzania in 1995 and the bombing of Kobar Towers in Dhahran, Saudi Arabia in 1996).

<sup>15</sup> **Dep’t of State, Background Note: Panama** 5-6 (2003) [hereinafter **Panama Background**].

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<sup>16</sup> Steve Nettleton, *Transfer Heavy on Symbolism, Light on Change*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/operation> (last visited Sept. 21, 2003).

<sup>17</sup> *Id.*

<sup>18</sup> James T. Hill, Gen., Commander, U.S. South Command, *Prepared Statement of General James T. Hill United States Army Commander, United States Southern Command* (March 14, 2003).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Steve Nettleton, *Transfer Heavy on Symbolism, Light on Change*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/operation> (last visited Sept. 21, 2003).

<sup>22</sup> **Edmund Morris**, *Theodore Rex* 86 (2001).

<sup>23</sup> CNN.com, *Troubled Passageway: Following Conflict Through the Panama Canal*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/history> (last visited Sept. 21, 2003).

Talk of a shipping canal across Central America began with Spanish explorer Vasco Nunez de Balboa, when he first discovered Panama in 1513. In 1869, U.S. President Ulysses S. Grant ordered a survey of the Isthmus of Panama and Nicaragua to assess the feasibility of digging a Canal. Grant's interest stemmed from a visit to the region as a U.S. Army captain in 1852. The United States did not act on the survey's findings, and French efforts to dig a canal began in 1878 [They completed the Suez the Canal in 1869]. The French did not complete the Canal, and left Panama in 1903. America's venture in Central America began with a debate over where to dig the Canal. Nicaragua was the initial favorite, but Panama was chosen because of heavy French lobbying of the U.S. Congress. The United States eventually took over the French effort, and completed the Canal in 1914.

*Id.*

<sup>24</sup> **Morris**, *supra* note 22, at 81-94.

<sup>25</sup> **Panama Background**, *supra* note 15, at 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> CNN.com, *Troubled Passageway: Following Conflict Through the Panama Canal*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/history/> (last visited Sept. 21, 2003).

<sup>29</sup> Steve Nettleton, *Transfer Heavy on Symbolism, Light on Change*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/operation> (last visited Sept. 21, 2003).

<sup>30</sup> Robert A. Pastor, *A Century's Journey into Panama*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/security> (last visited Sept. 21, 2003).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

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<sup>33</sup> See Korean War Chronological Concise Battle History (U.S. & Attached Ground Forces), at <http://www.korean-war.com/TimeLine/KoreanWarChronology.html> (stating the Korean War lasted from 1950-1953).

<sup>34</sup> Robert A. Pastor, *A Century's Journey into Panama*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/security> (last visited Sept. 21, 2003).

<sup>35</sup> Letter from Thomas H. Moorer, Admiral (retired), U.S. Navy, to George W. Bush, U.S. President, (Jan. 2002), available at <http://www.medabypass.com/archives/jan-02.htm> (last visited Nov. 15, 2003).

<sup>36</sup> Steve Nettleton, *Panamanians See Canal's Return as a Mixed Blessing*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/government> (last visited Sept. 21, 2003).

<sup>37</sup> Department of State, *Panama Canal Treaty*, available at <http://www.state.gov> (providing a brief overview of the Treaty).

<sup>38</sup> *Id.*

<sup>39</sup> Panama Treaty, *supra* note 9, art. II, §2, art. XIII, §1, 33 U.S.T. at 50, 75.

<sup>40</sup> **Panama Background**, *supra* note 15, at 5-6.

<sup>41</sup> *Fact Sheet: International Contributions to the War Against Terrorism*, Department of Defense (June 14, 2002).

<sup>42</sup> Anti-Terrorism Act, 18 U.S.C.A. §2331 (2003) (Showing that acts of terrorism are typically prosecuted as criminal offenses. As a result, defense against terrorist activity has traditionally been incorporated into law enforcement practices).

<sup>43</sup> **Panama Background**, *supra* note 15, at 4.

<sup>44</sup> The author has made numerous, unsuccessful requests to the PCC for information on the security division over a span of five months.

<sup>45</sup> Letter from Thomas H. Moorer to George W. Bush, *supra* note 33.

<sup>46</sup> See Panama Canal Traffic—Fiscal Years 2001 through and 2003, at 1, at <http://www.pancanal.com/eng/maritime/reports/table01.pdf> (2003) (giving total vessel figures for the past three fiscal years as follows: 2000, 13,653; 2001, 13,492; 2002, 13,185).

<sup>47</sup> See This is the Canal, at <http://www.pancanal.com/eng/general/asi-es-el-canal.html>.

<sup>48</sup> Panama Treaty, *supra* note 9, art. II, §2, art. XIII, §1, 33 U.S.T. at 50, 75 (The term “post-secession” as used in this context refers to the period of time after 1200 hours, 31 December 1999. After this time, the Republic of Panama assumed full autonomy and control over the former Panama Canal Zone).

<sup>49</sup> Panama Treaty, *supra* note 9, art. I, §1, 33 U.S.T. at 48.

<sup>50</sup> Steve Nettleton, *Panamanians See Canal's Return as a Mixed Blessing*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/government> (last visited Sept. 21, 2003).

<sup>51</sup> See ACP Overview, at <http://www.pancanal.com>.

<sup>52</sup> Panama Treaty, *supra* note 9, art. XIII, §1, 33 U.S.T. at 75.

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<sup>53</sup> Permanent Neutrality Treaty, *supra* note 10, art. V. 33 U.S.T. at 14.

<sup>54</sup> See *id.* art. II, 33 U.S.T. at 11.

<sup>55</sup> NSCT, *supra* note 11, at 1.

<sup>56</sup> Permanent Neutrality Treaty, *supra* note 10, art. III, §1(e), 33 U.S.T. at 13.

<sup>57</sup> See *id.* art. VI, § 1 amended by Permanent Neutrality Treaty, *supra* note 10, Annex A amend 2, 33 U.S.T. at 14, 22.

<sup>58</sup> Mark Almond, *Your Tyrant or Ours*, **Moscow Times**, Nov. 20, 2003, at \_\_\_\_.

<sup>59</sup> Sun Tzu, **The Art of War** 54 (Thomas Cleary, ed. 1988), Thomas Cleary, *Preface to Sun Tzu, The Art of War*, vii-viii (Thomas Cleary, ed. 1988) (Stating that Sun Tzu was a Chinese philosopher who wrote his *Art of War* in the third century B.C. Its longstanding applicability had led to its continued study by military officers, government employees, and corporate leaders the world round).

<sup>60</sup> **Joint Tactics**, *supra* note 11.

<sup>61</sup> *Id.* at II-1.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at II-2 to II-5 (There are nine additional terrorist tactics. They are assassination, arson, hostage taking, kidnapping, hijacking or skyjacking, seizure, sabotage, hoaxes, and use of technology).

<sup>65</sup> *Id.* at II-2.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> National Security Advisor Condoleezza Rice, Remarks to the National Legal Center for the Public Interest 4 (Oct. 31, 2003) (transcript on file with author).

<sup>69</sup> *About Us*, available at [http://www.okcbombing.org/about\\_us.htm](http://www.okcbombing.org/about_us.htm) (giving a brief synopsis of the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma).

<sup>70</sup> **Joint Tactics**, *supra* note 11, at II-2.

<sup>71</sup> *Id.*

<sup>72</sup> Jim Fisher-Thompson, *U.S. gives Kenya, Tanzania \$46 Million in Bombing Aftermath*, available at <http://usinfo.state.gov/topical/pol/terror/98110201.htm> (Oct. 30, 1998).

<sup>73</sup> *U.S. Sec'y of Def. Donald Rumsfeld Speaks at Senate Appropriations Committee Hearing* (CNN television broadcast, Sept. 24, 2003).

<sup>74</sup> Jim Fisher-Thompson, *U.S. gives Kenya, Tanzania \$46 Million in Bombing Aftermath*, available at <http://usinfo.state.gov/topical/pol/terror/98110201.htm> (Oct. 30, 1998).

<sup>75</sup> Rumsfeld, *supra* note 73.

<sup>76</sup> *Joint Tactics*, *supra* note 11, at II-3.

<sup>77</sup> *How it Works: Know Details about the Panama Canal*, at <http://www.pancanal.com> (giving a detailed explanation and graphic, interactive depiction of the operation of the Canal).

<sup>78</sup> *Id.*

<sup>79</sup> Interview by CNN.com with David McCullough, *available at* <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/interview.mccullough> (1999).

<sup>80</sup> CNN.com, *Troubled Passageway: Following Conflict Through the Panama Canal*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/history> (last visited Sept. 21, 2003).

<sup>81</sup> Robert A. Pastor, *A Century's Journey into Panama*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/security> (last visited Sept. 21, 2003).

<sup>82</sup> Steve Nettleton, *Panamanians See Canal's Return as a Mixed Blessing*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/government> (last visited Sept. 21, 2003) (As recently as 1989, Panama was controlled by a ruthless dictator in Manuel Noriega. Noriega brutally repressed the Panamanian people before being ousted by a U.S. Military Operation.).

<sup>83</sup> Bruce Bagley, *Panama-Colombia Border Conflicts Could Threaten the Canal*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/border> (last visited Sept. 21, 2003).

<sup>84</sup> Hill, *supra* note 18.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Bruce Bagley, *Panama-Colombia Border Conflicts Could Threaten the Canal*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/border> (last visited Sept. 21, 2003).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Ron Scherer and Alexandra Marks, *Gangs, Prison: Al Qaeda Breeding Ground?* (14 June 2002), *available at* <http://www.csmonitor.com/2002/0614/p02s01-usju.html> (last visited Dec. 17, 2003).

<sup>94</sup> See Panama Canal Traffic—Fiscal Years 2001 through and 2003, at 1, at <http://www.pancanal.com/eng/maritime/reports/table01.pdf> (2003) (giving total vessel figures for the past three fiscal years as follows: 2000, 13,653; 2001, 13,492; 2002, 13,185).

<sup>95</sup> Ledyard King, *White House Seeks Expanded Powers to Safeguard Ports*, Gannett News Service (Dec. 6, 2001).

<sup>96</sup> See National Security Branch, at <http://www.uscg.mil/hq/g-m/mor/Articles/NatlSecurity.htm>.

<sup>97</sup> See How it Works: Know Details about the Panama Canal, at <http://www.pancanal.com>.

<sup>98</sup> See Live Camera, at <http://www.pancanal.com/eng/photo/camera-java.html>.

<sup>99</sup> *Inside Washington* (CBS television broadcast, Aug 3, 2002) (Discussing detonation of explosives through the use of common cell phone technology).

<sup>100</sup> NSCT, *supra* note 11, at 11.

<sup>101</sup> **Joint Tactics**, *supra* note 11, at i (stating “The guidance in this publication is authoritative; as such, this doctrine (or JTTP) will be followed except when, in the judgment of the commander, exceptional circumstances dictate otherwise.”).

<sup>102</sup> *Id.* at I-1.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at I-2 (emphasis added).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> **U.S. Army Operational Law Handbook 315** (William O’Brien, U.S.N. LCDR ed., Int’l & Operational Law, Dep’t of the Judge Advoc. General’s Sch. 2003) [hereinafter **Handbook**].

<sup>108</sup> U.S. Const. art. I.

<sup>109</sup> Permanent Neutrality Treaty, *supra* note 10, amend A(2), 33 U.S.T. at 5 (stating “Nothing in the Treaty shall preclude the Republic of Panama and the United States of America from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or the maintenance of the defense sites after that date in the Republic of Panama that the Republic of Panama and the United States of America may deem necessary or appropriate.”).

<sup>110</sup> *Id.*

<sup>111</sup> See, *History of U.S. Counter-terrorism Policy*, at <http://www.armscontrolcenter.org/terrorism/101/history.htm> (providing a more lengthy history of anti-terrorism legislation and Executive action) (last visited Dec. 17, 2003).

<sup>112</sup> 22 U.S.C. §2430 (1961).

<sup>113</sup> See *id.* §2430(a).

<sup>114</sup> *Id.*

<sup>115</sup> Convention on the Territorial Sea and Contiguous Zone, Apr. 29, 1958, 15 U.S.T. 1606 [hereinafter **Sea Convention**].

<sup>116</sup> See, *Internet Guide to International Fisheries Law*, at <http://www.oceanlaw.net/texts/summaries/loscfish.htm>.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Senator Richard G. Lugar, Opening Statement to the U.N. Convention on the Law of the Sea Hearing (Oct. 14, 2003).

<sup>120</sup> President Ronald Reagan, Statement to the U.N. Concerning the Law of the Sea Convention (March 10, 1983).

<sup>121</sup> See *Oceans and Law of the Sea*, at [http://www.un.org/Depts/los/convention\\_agreements/convention\\_declarations.htm](http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm).

<sup>122</sup> Sichan Siv, U.S. Rep. to the U.N. Econ. and Soc. Council, Statement in the General Assembly on Oceans and Law of the Sea (Nov. 27, 2001).

<sup>123</sup> Ruth Wedgwood, *United Nations*, at <http://foreignpolicy2000.org/library/issuebriefs/IBUnitedNations.html> (last visited Nov. 15, 2003).

<sup>124</sup> William S. Cohen, fmr. U.S. Sec. of Def., Annual Report to the President and Congress (1999).

<sup>125</sup> Sea Convention, *supra* note 115, art. 298.1(b) (speaking on, but not defining, “military activities”).

<sup>126</sup> William H. Taft IV, Dep. of St. Leg. Adviser, Testimony to Senate Foreign Relations Committee concerning Law of the Sea Treaty (Oct. 21, 2003).

<sup>127</sup> Mark T. Esper, Dep. Ass. Sec. of Def. for Negotiations Pol’y, Testimony to Senate Foreign Relations Committee concerning Law of the Sea Treaty (Oct. 21, 2003).

<sup>128</sup> See *Oceans and Law of the Sea*, at [http://www.un.org/Depts/los/convention\\_agreements/convention\\_declarations.htm](http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm).

<sup>129</sup> Cohen, *supra* note 124.

<sup>130</sup> Esper, *supra* note 127.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Siv, *supra* note 122.

<sup>134</sup> *Id.*

<sup>135</sup> Chris Dupin, *Exec: IMO Key to Fighting Terror*, J. Com. Online (Jan 30, 2002).

<sup>136</sup> Esper, *supra* note 127.

<sup>137</sup> President George W. Bush., Remarks to the people of Poland in Krakow, Poland (June 9, 2003).

<sup>138</sup> Catherine Armitage, *China Urged Down New WMD Path*, **The Australian**, Sept. 26, 2003, at 10.

<sup>139</sup> *Id.*

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<sup>140</sup> *Ship Interceptions Agreed to Fight Trade in WMDs*, Lloyd's List Int'l, July 11, 2003 at 1 (quoting John Bolton, U.S. Undersec'y of St. for Arms Control and Int'l Sec).

<sup>141</sup> Rice, *supra* note 68.

<sup>142</sup> King, *supra* note 95.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Sea Convention, *supra* note 115, art. 94.

<sup>147</sup> **Dep't of Def. Joint Pub. 3-07, Joint Doctrine for Military Operations Other than War III-3** (June 16, 1995) [hereinafter **Joint Doctrine**].

<sup>148</sup> *Strategic Plan: Fiscal Years 2004-2009*, Dep't St. (Aug. 2003) at 1.

<sup>149</sup> *Anti-Terrorism Assistance (ATA)*, available at <http://www.ciponline.org/facts/ata.htm> (last visited Dec. 17, 2003).

<sup>150</sup> 22 U.S.C. §2430.8(2) (1961).

<sup>151</sup> See *Anti-Terrorism Assistance (ATA)*, at <http://www.ciponline.org/facts/ata.htm> (quoting U.S. Dep't of St., *Congressional Presentation for Foreign Operations, Fiscal Year 2000*).

<sup>152</sup> 22 U.S.C. §2430.8(2)(571) (1961).

<sup>153</sup> Steve Nettleton, *Panamanians See Canal's Return as a Mixed Blessing*, at <http://www.cnn.com/SPECIALS/1999/panama.canal/stories/government> (last visited Sept. 21, 2003).

<sup>154</sup> **Dep't of State, Inter-American Committee Against Terrorism: Fact Sheet 1** (Jan. 30, 2002) (stating CICTE is a Spanish acronym).

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> **Joint Doctrine**, *supra* note 148, at i (stating "The guidance in this publication is authoritative; as such, this doctrine (or JTTP) will be followed except when, in the judgment of the commander, exceptional circumstances dictate otherwise.").

<sup>158</sup> **Joint Doctrine**, *supra* note 148.

<sup>159</sup> **Dep't of Def. Joint Pub. 3-05, Doctrine for Joint Special Operations**, (April 17, 1998) [hereinafter **Special Operations**].

<sup>160</sup> **Joint Doctrine**, *supra* note 148, at I-1.

<sup>161</sup> *Id.* at I-2.

<sup>162</sup> *Id.*

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<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at I-3.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Panama Treaty, *supra* note 9, art. XI, 33 U.S.T. at 70.

<sup>172</sup> See USS Cole (DGG 67), *at* <http://www.cole.navy.mil>.

<sup>173</sup> **Special Operations**, *supra* note 160, at I-1.

<sup>174</sup> *Id.* at I-1 – I-2.

<sup>175</sup> *Id.* at I-4.

<sup>176</sup> **Handbook**, *supra* note 107, at 315 (Other types of Special Operations missions include direct military action, foreign internal defense, unconventional warfare, psychological operations, counterproliferation of weapons of mass destruction, information operations, coalition support, combat search and rescue, counterdrug activities, humanitarian assistance, humanitarian demining activities, and security assistance. Some aspects of these missions may be necessary in defense of the Panama Canal.).

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> See International Responsibilities, *at* <http://www.uscg.mil>.

<sup>180</sup> See National Security, *at* <http://www.uscg.mil>.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> **NSCT**, *supra* note 11, at 1.

<sup>184</sup> **Dep’t of Def. Joint Pub. 3-07.1, Joint Tactics, Techniques and Procedures for Foreign Internal Defense (FID)** i (26 June 1996) (stating “The guidance in this publication is authoritative; as such, this doctrine (or JTTP) will be followed except when, in the judgment of the commander, exceptional circumstances dictate otherwise.”).

<sup>185</sup> *Id.* at I-1.

<sup>186</sup> *Id.*

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<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at I-2.

<sup>189</sup> *Id.* at I-5.

<sup>190</sup> **Panama Background**, *supra* note 15, at 5.

<sup>191</sup> **Joint Tactics**, *supra* note 11, at I-2.

<sup>192</sup> *Id.*

<sup>193</sup> 22 U.S.C. §2770(a) (1968).

<sup>194</sup> **Joint Tactics**, *supra* note 11, at IV-2.

<sup>195</sup> *Id.* at IV-8.

<sup>196</sup> *Id.* at IV-7.

<sup>197</sup> *Id.* at IV-5.

<sup>198</sup> *Id.* at IV-4.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* at IV-8.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*